IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

MONDAY, THE THIRTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE MR JUSTICE K.C. BHANU

WRIT APPEAL NO : 1032 of 2002

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 19/04/2002 in WP NO : 7717 OF 1999 on the file of the High Court.)

Between:

The Commissioner Paloncha Municipality
Paloncha, Khammam District

..... APPELLANT

AND

Kodeboyina Venkateswara Rao

.....RESPONDENT

Counsel for the Appellant: MR.R.TIMMA REDDY

Counsel for the Respondent: MR.NUTY RAM MOHAN RAO

The Court made the following :

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HONOURABLE SRI JUSTICE B.SUDERSHAN REDDY

AND

HONOURABLE SRI JUSTICE K.C.BHANU

W.A.No.1032 of 2002

JUDGMENT: (Per Division Bench)

Aggrieved by the common order, dated 19.4.2002 passed by the learned single Judge of this Court in respect of W.P.No.7717 of 1999, the appellant-Commissioner has filed this appeal questioning the correctness and legality of the order.

The brief facts, which are required to be noticed for the purpose of disposal of this appeal may be delineated as follows:

The respondent in this appeal filed a writ petition to issue appropriate

certiorarized mandamus calling for the records relating to Roc.No.G/1957/97, dated 23.1999 and consequential direction to issue permission for construction of commercial complex in accordance with the measurements noted in the assessment record of the erstwhile Paloncha Grampanchayat.

The petitioner claims to have purchased a site measuring 150 Ft. x 60 Ft. approximately 1000 sq. yards under an unregistered sale deed in the year 1964 and constructed a compound wall enclosing the said site in the year 1965. He also put up huts therein and subsequently constructed a building in the year 1973 and the erstwhile Grampanchayat assigned a number to the said construction of house and recorded the extent as 150 Ft. x 60 Ft. The said measurement continued in the assessment register till Grampanchayat was upgraded as Municipality on 4.2.1987. According to him, the measurements as recorded in the Grampanchayat records automatically continued in the assessment record of Paloncha Municipality. He applied for permission to construct shopping complex within the compound wall duly paying requisite fee on 18.10.1997. The said application was rejected by an order, dated 22.11.1997 on the ground that the site was not tallying with the measurements noted in the municipality assessment record. According to him, the measurements of the site were not taken after municipality was constituted; therefore, the municipality cannot take note of different measurements and what was noted in the Grampanchayat. Then, he filed a writ petition before this Court on 11.11.1998 wherein this Court granted interim order, dated 12.11.1998 directing the municipality to consider his representation within four weeks. Without complying the order of this Court, the Commissioner by his proceedings dated 29.1.1999 directed the petitioner to submit Xerox copy of the registered documents, but he submitted a copy of unregistered document and the Municipal Commissioner by his letter, dated 2.3.1999 rejected the permission on the ground that the registered document is not produced. According to him, there is no registered document as the value of the

site is less than Rs.100/- at the time of his purchase. So, the Commissioner, without applying his mind properly passed the order mechanically and the Commissioner has no jurisdiction to note wrong measurements of his site. Therefore, the rejection order is totally illegal, null and void. Hence, the writ petition.

The appellant herein who is the respondent in the writ petition filed counter affidavit denying the construction of compound wall by the petitioner in the year 1965 and stated that construction of compound wall is illegal as he has not obtained any permission either from the Grampanchayat or Municipality; and there was no permission of the Municipality or Grampanchayat even for construction of the building. The Grampanchayat assessed the house in question for the property tax by allotting door number and mere entries in the assessment books of Grampanchayat will not confer ownership rights of the site and mere recording of the measurement in the assessment book in the absence of ownership documents will not perfect the title of the surrounding land to the existing building. Without giving any particulars of the permission, he is making false allegations stating that the Muncipality is not granting permission. The petitioner has encroached upon municipal site and trying to get permission for the shopping complex on the plea that he became the owner of the site on the basis of the measurements recorded in the assessment of the property tax. The respondent therein rejected the application of the petitioner on the ground that the measurements in the plan submitted by the petitioner and the assessment registers of the municipality are not tallying. Hence, the plans were returned. As per the order of this Court in W.P.No.31452 of 1998, the respondent considered the case of the petitioner and issued final orders directing him to produce the registered documents of the site, but the petitioner failed to do so. The petitioner should have availed himself of the opportunity of filing an appeal under Section 345 of A.P. Municipalities Act, 1965 (for short “The Act”), but instead of doing so, he approached this Court and therefore, the writ petition is liable to be dismissed and he prays to dismiss the writ petition.

The petitioner filed an application W.P.M.P.No.4516 of 2000 in W.P. No.7717 of 1999 to appoint an advocate commissioner to note down the physical features and measurements of the site in question. Accordingly, the officials concerned inspected the site in question. The officials took the measurements with reference to the Grampanchayat and municipal records and also the site existing on the ground at present. As per the Grampanchayat records, the extent of land is 833.32 square meters equivalent to 1000 sq. yards. As per the municipal records, the extent of site is 698.56 sq. metres equivalent to 838.27 sq. yards, whereas the existing extent of land on the ground is 894.82 sq. metres equivalent to 1073.79 square yards. Therefore, basing on the material available on record, the learned Judge framed a question, which reads as follows:

> *"The question that arises for consideration is as to whether the petitioner is the owner of the site in question to an extent of 1000 sq. yards and whether the Municipality is bound by the entries made in the Grampanchayat records."*

The learned single Judge, considering the material on record, came to the conclusion that there was no third party claim over the property in question to the extent of 1000 sq. yards and that the entries made in Grampanchayat records with regard to the measurement of the site in question cannot be altered or changed without there being an enquiry and the entries maintained by the municipality are without any basis and therefore, the respondent is bound to rectify its mistakes for entering wrong measurements in the municipal records and directed the respondent to correct the entry of 1000 square yards in the municipal records basing on the entries made in the erstwhile Grampanchayat records and to issue permission to the petitioner for construction of commercial complex in accordance with the rules and bye-laws within four weeks from the date of receipt of a copy of the order.

The learned standing counsel Sri R.Thimma Reddy, appearing for the appellant-Municipality has contended that the petitioner has produced neither the sale deed related to the site in question nor any

link documents to show the title that he has encroached upon the municipal road; and there was alternative remedy for the respondent herein to file an appeal before the competent authority as provided under Section 345 of the Act; and that the learned single Judge is not correct in declaring the title of the respondent herein; and that the same entries in the Grampanchayat records do not confer any title over the site in question and therefore, he prays to set aside the judgment under appeal.

The learned counsel appearing for the respondent has contended that the copy of the unregistered sale deed was furnished to the municipality for sanction of the plan; and in the sale transaction that took place in the year 1965, the respondent herein purchased the property less than Rs.100/-, therefore, it need not be registered in terms of Section 17 of the Act; and there is no third party claim over the property in question; and the respondent is ready to forego the excess land of 73.79 sq. yards; and permission may be given to the remaining extent for construction of the commercial complex; and this Court has got jurisdiction to correct the mistakes committed by the statutory authorities. Therefore, he prays to dismiss the appeal.

The respondent herein filed a petition on 1.8.1998 requesting the municipality to correct the measurements of the premises No.14/88 situated at Mosque road, Paloncha Municipality in the assessment books of the property tax. On two grounds, the application of the petitioner was rejected. Firstly, the respondent failed to produce the registered documents of the site in question, secondly, he encroached upon the municipal site and constructed the compound wall and therefore, he was informed to produce the permission of the same along with the link documents of the site in question so that his petition for construction of the shops could be considered by the appellant herein. Further, he filed a suit O.S.No.113 of 1998 in the Court of District Munsif, Kothagudem which was pending and as the subject matter is subjudice, no permission can be accorded as per the plan submitted by him. It is not disputed before us that the petitioner withdrew the suit in O.S.No.113 of 1998 on the file of District

Munisif, Kothagudem on 24.6.1998. There cannot be any dispute that the measurements noted in the assessment books of the Grampanchayat or in the municipal records are only meant for the purpose of tax assessment and admittedly, the payment of tax at best can be taken into consideration for proving the possession of the property. Therefore, some entries in the assessment books of the Grampanchayat is not a proof of showing title over the property. In any view of the matter, this Court, while exercising the jurisdiction under Article 228 of the Constitution of India cannot decide the dispute relating to the title. Therefore, the title of the property in respect of the petitioner's claims is left open. It is not in dispute that the Municipal Commissioner, Paloncha is the competent authority whether to grant permission to construct a building or not in accordance with the provisions of the Act and rules and regulations made thereunder. Section 230 of the Act reads that the rules embodies in schedule III shall be read as part of this chapter.

Section 209 of the Act is with regard to filing of application by a person intends to construct or reconstruct a building other than a hut, he shall send to the Commissioner:-

a. *an application in writing for the approval of the site, together with a site plan of the land, and*

b. *an application in writing for permission to execute the work together with ground-plan, elevations and sections of the building, and a specification of the work.*

c. *A copy of the title deed of the land duly attested by a Gazetted Officer of the Government together with an urban land ceiling clearance certificate or as the case may be, an affidavit referred to in Section 184.*

Under sub-section (2), every document furnished under sub-section (1) shall contain such particulars and be prepared in such manner as may be required under rules or bye-laws. Schedule-III appended to the Act contains building rules. Rule-2 requires certain documents to

be accompanied for the application for construction of the building. The owner has to furnish to comply with the requirements specified in Appendix 'C', Appendix 'D' and Appendix 'E' attached to the said rules. Therefore, the owner has to comply with the conditions mentioned hereinabove and also the requirements as contemplated under G.O.No.422 MA, dated 31.7.1988. As per the joint inspection conducted by the officials concerned in pursuance of the directions of the learned single Judge of this Court, the Assistant Director, Survey and Land Records, Khammam, Town Planning Officer, the Mandal Surveyor of Polancha Mandal Revenue Office, Paloncha found 833.32 square metres equivalent to 1000 sq. yards in the Grampanchayat records. As per the municipal records, the extent of the property is 698.56 sq. metres equivalent to 838.27 sq. yards, whereas the extent of land available on the ground is 894.82 sq. metres equivalent to 1073.79 sq. yards. According to the municipal records, the petitioner is alleged to have occupied an excess area 73.79 sq. yards. For that matter, the respondent herein filed unconditional undertaking that he would forego the excess land of 73.79 square yards. As the suit was pending before the District Munsif's Court, the appellant herein seems to have not accorded permission as the matter is subjudice. Now, as the suit has been withdrawn, it is required to be reconsidered by the appellant herein. Upon the application of the petitioner, dated 11.8.1998 in the impugned order, the appellant-Commissioner directed the petitioner to produce the link documents of the site in question, so that his petition for construction of house could be considered and also directed to produce the permission for construction of the compound wall. After production of such of those document as required under the provisions of the Act and Rules made thereunder, the appellant-Commissioner has to consider the application of the petitioner for construction of proposed shopping complex.

Regarding the documents relating to the title of the property, necessary entries have to be made in the municipal records. So, with regard to production of the title deed and its link documents, in our

considered opinion, the learned single Judge gave incorrect finding directing the appellant-respondent to correct the entry1000 sq. yards in the municipal records basing on the entries made in the erstwhile Grampanchayat records. Therefore, that finding of the learned single Judge is set aside, however, it is made clear that it is for the petitioner to establish his title to the extent of 1000 sq. yards by producing necessary documents and make an application to correct the entries in the municipal records but not on the basis of entries made in the erstwhile Grampanchayat records. Insofar as the permission for construction of the site in question is concerned, the direction requires slight modification because it is the appellant who has to give necessary permission for construction of the building in accordance with the provisions of the Act and the Rules made thereudner.

We are unable to accept the contention raised by the learned counsel for the appellant-Commissioner that the respondent herein has got alternative remedy by filing an appeal under Section 345 of the Act. As seen from the impugned notice, the Commissioner has not passed any order refusing or granting any licence or permission to construct any building. As the matter is subjudice, the Commissioner observed that no permission can be accorded. That issue no longer holds good in view of the fact that the suit has been withdrawn. If that part of observation was deleted, then the impugned notice, dated 2.3.1999 shows that the petitioner is required to produce the permission for construction and also the title deeds along with link documents have to be submitted for verification so that the Commissioner will pass appropriate orders. So, in such view of the matter, in our considered opinion, Section 345 of the Act has no application.

For the aforesaid reasons, the direction of the learned Single Judge with regard “to enter correct entry of 1000 sq. yards in the municipal Records basing on the entries made in the erstwhile Gram Panchayat Records” is set aside and the respondent herein is directed to submit an application along with the records as required

under the Act and the rules made thereunder to the appellant-Commissioner and thereafter, the appellant Commissioner has to take appropriate decision for correcting the entries in the Municipal Records and also for granting permission to construct commercial complex in accordance the provisions of the Act and rules made thereunder duly considering the fact that the respondent herein would forego the land of an extent of 73.79 sq. yards. Considering the application of the respondent herein, the appellant Commissioner shall dispose of the same within a period of eight weeks from the date of receipt of a copy of this Order.

With the above modifications, this appeal is partly allowed. In the circumstances of the case, there shall be no order as to costs.

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(B.SUDERSHAN REDDY,J.)

13th September, 2004.

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(K.C.BHANU,J.)

To

1. The Commissioner, Paloncha Municipality, Paloncha,

Khammam District.

2. Two C.D. copies

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